



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1194 (Advisory Opinion Proceeding)]

Certain High-Density Fiber Optic Equipment and Components Thereof; Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding as requested by Panduit Corporation (“Panduit”). The Commission has also determined to refer this matter to the Chief Administrative Law Judge (“CALJ”) for assignment to an administrative law judge (“ALJ”) for appropriate proceedings and an initial advisory opinion (“IAO”). The IAO is to be issued at the earliest practicable time, preferably within 120 days from the date of institution, but no later than 7 months after institution.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (“Corning”) of Charlotte, North Carolina. 85 FR 16653-54 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation

of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (the “’320 patent”), 10,444,456 (the “’456 patent”), 10,120,153 (the “’153 patent”), 8,712,206 (the “’206 patent”), and 10,094,996 (“the ’996 patent”). *Id.* The ’996 patent was subsequently terminated from the investigation. *See* Order No. 11 (July 29, 2020), *unreviewed by* Comm’n Notice (Aug. 13, 2020). The Commission’s notice of investigation named thirteen respondents including, among others, Panduit of Tinley, Illinois; FS.com Inc. (“FS”) of New Castle, Delaware; Leviton Manufacturing Co., Inc. (“Leviton”) of Melville, New York; Panduit of Tinley, Illinois; and The LAN Wirewerks Research Laboratories Inc. d/b/a Wirewerks of Quebec, Canada; and The Siemon Company (“Siemon”) of Watertown, Connecticut (collectively, “Respondents”). *See* Comm’n Op. at 3-5 (Aug. 23, 2021). The remaining respondents were either found in default pursuant to Commission Rule 210.16, or terminated from the investigation based on withdrawal of the allegations in the complaint or a settlement agreement. *Id.* The notice of investigation also named the Office of Unfair Import Investigations (“OUII”) as a party. *Id.* at 4.

On March 23, 2021, the ALJ issued a final initial determination (“ID”) finding a violation of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent (collectively, “Asserted Patents”).

On May 24, 2021, the Commission determined to review the final ID in part. 86 FR 28890-93 (May 28, 2021). On August 3, 2021, the Commission determined that Corning established a violation of section 337 with respect to claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent. 86 FR 43564-66 (Aug. 9, 2021). Among other findings, the Commission affirmed with modifications the ID’s finding that Panduit induced infringement of the asserted claims of the ’320, ’456, and ’153 patents but not the ’206 patent. As a remedy, the Commission determined to issue a general exclusion order (“GEO”) and cease

and desist orders (“CDOs”), including one directed to Panduit.

On November 24, 2021, Corning filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75 to investigate alleged violations of the GEO and CDO by Panduit. On December 28, 2021, the Commission determined to institute an enforcement proceeding to determine whether violations of the GEO and CDO have occurred and to determine what, if any, enforcement measures are appropriate. Panduit and OUII were named as parties. The Commission referred the enforcement proceeding to the Chief ALJ for designation of a presiding ALJ to conduct any necessary proceedings, issue an Enforcement Initial Determination, and make a recommendation on appropriate enforcement measures, if any.

On November 29, 2021, Panduit, Siemon, and FS filed a notice of appeal with the U.S. Court of Appeals for the Federal Circuit seeking review of the Commission’s determination. The appeal (Docket No. 2022-1228) was docketed on December 7, 2021.

On April 18, 2022, Panduit filed the subject request for an advisory opinion that three new fiber optic equipment designs that it developed do not infringe any asserted claims of the Asserted Patents and are therefore not covered by the GEO and CDO issued in this investigation. Panduit’s new designs include: (1) a patch panel design with a density of 192 fiber optic connections in a 1U space; (2) a patch panel design with a density of 144 fiber optic connections in a 1U space; and (3) a new enclosure design with a density of 192 fiber optic connections in a 1U space (collectively, “New Designs”). On April 28, 2022, Corning and OUII filed responses to Panduit’s request.

Having reviewed Panduit’s request and the supporting documents, the Commission has determined to institute an advisory opinion proceeding to ascertain whether Panduit’s New Designs infringe claims 1 and 3 of the ’320 patent; claims 11, 12, 14-16, 19, 21, 27, and 28 of the ’456 patent; claims 9, 16, 23, and 26 of the ’153 patent; and claims 22 and 23 of the ’206 patent, and are covered by the remedial orders issued in this investigation. The Commission has

further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and the issuance of an IAO at the earliest practicable time, preferably within 120 days of institution but no later than 7 months after institution. The ALJ shall set a target date at two months following the date of issuance of the IAO. The target date may be extended for good cause shown. The following entities are named as parties to the proceeding: (1) Panduit; (2) Corning; and (3) OUII.

The Commission vote for this determination took place on May 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 18, 2022.

Lisa Barton,

Secretary to the Commission.

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